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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/067,164  | 02/04/2002  | Seth A. Foerster     | A1694               | 4923             |
| 33197   | 7590        | 04/07/2004           | EXAMINER            |                  |
| STOUT, UXA, BUYAN & MULLINS LLP<br>4 VENTURE, SUITE 300<br>IRVINE, CA 92618 |             |                      | WOO, JULIAN W       |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3731                |                  |

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/067,164             | FOERSTER ET AL.     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Julian W. Woo          | 3731                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-30 is/are allowed.
- 6) ☒ Claim(s) 1,2,8,11 and 12 is/are rejected.
- 7) ☒ Claim(s) 3-7, 9, 10, and 13-22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/10/02,6/23/03</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 8, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Mather (918,570). Mather discloses, in the figures, a knotless suture anchor apparatus with an anchor body (1) having a proximal end, a distal end, a lumen opening (8) at the proximal end, a plurality of suture-locking elements (11, 12) located within the anchor body lumen, where each element is movable from respective first positions (see fig. 12) to second positions (see fig. 13), where the locking elements in their first positions together define a generally uniform cross-sectional axial passage and in their second positions together define an irregular cross-sectional axial passage, where the axial passage is located generally in the center of the lumen, and where the locking elements move toward the center of the lumen and radially from their first to their second positions.

### ***Allowable Subject Matter***

3. Claims 23-30 are allowed.

4. The following is an examiner's statement of reasons for allowance: None of the prior art of record, alone or in combination, discloses a method of securing soft tissue

with respect to a body cavity without knots where an anchor body is applied, where, inter alia, the anchor body has a proximal end, a distal end, a lumen opening at the proximal end, a plurality of suture-locking elements located within the anchor body lumen, where each element is movable from respective first positions to second positions, where the locking elements in their first positions together define a generally uniform cross-sectional axial passage and in their second positions together define an irregular cross-sectional axial passage.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Claims 3-7, 9, 10, and 13-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record, alone or in combination, discloses a knotless suture anchor apparatus, where the apparatus has, inter alia, an anchor body having a proximal end, a distal end, a lumen opening at the proximal end, a plurality of suture-locking elements located within the anchor body lumen, where each element is movable from respective first positions to second positions, where the locking elements in their first positions together define a generally uniform cross-sectional axial passage and in their second positions together define an irregular cross-sectional axial passage, where

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the locking elements are substantially C-shaped and each element surrounds and defines approximately three-quarters of the axial passage, where at least one of the locking elements moves in a different direction than the others from their respective first to their second positions, where the apparatus includes a suture locking plug that contacts at least some of the locking elements.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Belden et al. (5,957,968) teach a suture anchor with C-shaped elements.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (703) 308-0421. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached at (703) 308-2496.

General inquiries relating to the status of this application should be directed to the Group receptionist at (703) 308-0858. The official FAX number is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo  
Primary Examiner

April 5, 2004